



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF K-Q-

DATE: OCT. 2, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an electrical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and asserts that the Director conflated his employment at the time of filing with his proposed endeavor, and that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a research assistant and doctoral student in the computer and electrical engineering department at [REDACTED]. In response to the Director's request for evidence (RFE), the Petitioner submitted evidence that he accepted a position as a holographer at [REDACTED] a producer of augmented reality technology. For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner has stated that he plans to pursue research in "the development of improved device fabrication methods and advanced optical imaging technology." He has also indicated that he will continue his work involving 3D printing technology, as well as holographic video and volumetric displays.

In her decision, the Director determined that based upon the Petitioner's description of his duties as a "Ph.D. candidate" that appeared in Part 6, Item 3 of Form I-140, Immigrant Petition for Alien Worker, the record did not establish the substantial merit or national importance of his proposed endeavor. Specifically, the Director considered the Petitioner's employment with [REDACTED] to be a change in his endeavor and did not consider the duties of this position in her decision. She also was not satisfied that the duties of the "Ph.D. candidate" position were sufficiently detailed, or that they would have a broader impact on the field of electrical engineering. However, as mentioned above, the analysis in the first prong under the *Dhanasar* framework is prospective, focusing on the merits of the proposed endeavor, and is not limited by a petitioner's occupation or educational status at the

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner submitted copies of his diploma and official academic transcript from [REDACTED] which show that he holds a master of science degree in electrical and computer engineering. See 8 C.F.R. § 204.5(k)(3)(i)(A).

time of filing. As with all those applying for a national interest waiver, we consider the Petitioner's current and prospective job offers in this analysis only as they illustrate the capacity in which he intends to work.

Further, we do not find the Petitioner's current duties as a holographer with [REDACTED] to be inconsistent with his stated proposed endeavor. [REDACTED] Principal Scientist at [REDACTED] describes the Petitioner's duties as a holographer as follows:

As a Holographer, [the Petitioner's] general responsibilities include the design, creation and improvement of holographic displays characterized for vertical and horizontal parallax; testing, diagnosing, and resolving any problems related to software-defined light systems; and advising [REDACTED] chemistry team about three-dimensional printing and fluidics used in 3D printing.

Upon review of the entirety of the record, we find that the Petitioner has established that both requirements under this first prong have been met. The substantial merit of the Petitioner's proposed endeavor is demonstrated in several reference letters submitted with the initial filing. For instance, [REDACTED] of the [REDACTED] states that the Petitioner's research in the 3D printing of microfluidic devices presents significant advantages over the traditional methods of producing these devices and "results in the greater productivity of research throughout the field." In writing about the Petitioner's work on three-dimensional displays, [REDACTED] states that this technology has "a range of applications from entertainment to health care and engineering."

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. The evidence of this impact includes a transcript of a [REDACTED] committee hearing on augmented reality, during which the committee heard from [REDACTED] Chief Executive Officer regarding the benefits of the technology which the Petitioner will be helping to develop, which could extend to the manufacturing, transportation and health industries. The Petitioner also provided recent media articles discussing his work on volumetric displays which noted their possible applications in medical imaging. This evidence demonstrates that the Petitioner's proposed work to further these areas of technology stands to have broader implications in several industries. Accordingly, as the Petitioner has documented the substantial merit and national importance of his proposed endeavor, we disagree with the Director and find that he meets the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner submits copies of his academic credentials, papers published in scholarly journals, information regarding the number and context of citations to those papers, and several reference letters from experts in his field.

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor aimed at developing holographic and volumetric displays and furthering the technology of 3D printing. In his letter describing the Petitioner's research in the 3D printing of microfluidic devices, [REDACTED] of [REDACTED] states that it "led to a vast improvement in the process by which microfluidic devices are made," and that "the influence of this research can be seen in the various projects that have made use of it in some way." [REDACTED] of the [REDACTED] provides examples of this, writing that he discussed the Petitioner's work "throughout" his review article titled "3D-printed microfluidic devices." He calls the Petitioner's study "pioneering," describes other published research which relied upon his work, and notes that it "has led to tangible improvements in electrical engineering and related fields." Other writers also describe the direct impact of the Petitioner's work on their own research. In addition, [REDACTED] of [REDACTED] who served as the Petitioner's Ph.D. adviser, describes the Petitioner's creation of a component which can lead to smaller and cheaper holographic equipment and states that it "represents a tremendous step forward for holographic technology because it makes this technology easier to produce." These letters indicate that the Petitioner has established a track record of success in research and development related to his proposed endeavor.

The record also includes citation evidence which corroborates the statements highlighted above, showing that the Petitioner's published work has been cited at a rate which is high relative to others in his field. In particular, the number and context of citations to the Petitioner's work on the 3D printing of microfluidic devices helps to show his past record of achievement, demonstrating that he is well positioned to advance development in this area. We also note that [REDACTED] has indicated that the Petitioner's current position with [REDACTED] involves both the development of holographic displays and holographic 3D printing technology, covering both aspects of the Petitioner's proposed endeavor.

The Petitioner's expertise in electrical engineering, record of success in contributing to related research projects, and progress in the areas of 3D printing and the development of 3D displays position him well to continue to advance his proposed endeavor. Accordingly, we find that he satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Petitioner holds a master of science degree in electrical engineering, and at the time of filing was pursuing his Ph.D. at [REDACTED]. He has demonstrated his expertise in the area of 3D printing techniques, and the record shows that his work in this area has already had significant influence on researchers in his field and in others. Several experts have indicated that the use of 3D printing to fabricate microfluidic devices, as pioneered in the Petitioner's study, has saved time and improved access to these important tools of research. In addition, his research on volumetric displays has garnered attention in both mainstream and

scientific media, and he is already applying his research on holograms to the development of augmented reality devices with a wide range of applications. For these reasons, we find that the Petitioner has established that, on balance, the United States will benefit from his contributions, even assuming that other qualified U.S. workers are available. Therefore, he satisfies the third prong of the *Dhanasar* framework.

### III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We therefore find that he has established eligibility for and otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.

Cite as *Matter of K-Q-*, ID# 1602741 (AAO Oct. 2, 2018)